

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

Proposing rule making related to amusement devices and providing an opportunity for public comment

The Inspections and Appeals Department hereby proposes to amend Chapter 104, “General Provisions for All Amusement Devices,” and Chapter 105, “Registered Amusement Devices,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 99B.2 and 99B.52(7).

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 99B.2.

Purpose and Summary

The proposed amendments implement changes made to Iowa Code chapter 99B, “Social and Charitable Gaming,” resulting from 2015 Iowa Acts, Senate File 482. The legislation modernized Iowa Code chapter 99B by streamlining processes and eliminating unnecessary licenses.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 21, 2018. Comments should be directed to:

David Werning
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0083
Email: david.werning@dia.iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **481—104.1(10A,99B)**, definitions of “Amusement device” and “Gambling device,” as follows:

“*Amusement device*” means an electrical or mechanical device possessed and used in accordance with Iowa Code ~~section 99B.10~~ chapter 99B. An amusement device is not a game of skill or chance as defined in Iowa Code section 99B.1, a gambling device, or a device that plays poker, blackjack, or keno. Roulette wheels, slot machines, and other devices specified in Iowa Code section 725.9 as gambling devices are not amusement devices.

“*Gambling device*” means a device possessed or used or designed to be used for gambling and includes, but is not limited to: roulette wheels, klondike tables, punchboards, faro layouts, keno layouts, numbers tickets, slot machines, pachislo skill-stop machine or any other similar machine or device, push cards, jar tickets, pull-tabs, and video machines or other devices that do not comply with Iowa Code ~~section 99B.10~~ chapter 99B.

ITEM 2. Adopt the following **new** definition of “Progressive games” in rule **481—104.1(10A,99B)**:

“*Progressive games*” means games in which the value of the prizes increases an incremental amount with each game.

ITEM 3. Amend rule 481—104.2(99B) as follows:

481—104.2(99B) Device restrictions. An amusement device, except for an amusement device which shall be registered pursuant to Iowa Code section ~~99B.10(1)“f,”~~ 99B.53, may be owned, possessed, or offered for use by any person at any location. All amusement devices shall comply with all of the following:

1. to 8. No change.

9. The device must be registered if it meets the registration requirements set forth in Iowa Code section 99B.53 and rule 481—104.5(99B).

ITEM 4. Amend rule 481—104.3(99B) as follows:

481—104.3(99B) Prohibited games/devices. The following games or devices are not permitted:

1. and 2. No change.

3. Any machine that does not conform to the requirements in these rules or Iowa Code ~~section 99B.10~~ chapter 99B.

4. and 5. No change.

6. Progressive games.

NOTE: This rule does not prohibit the possession of antique slot machines when possessed pursuant to Iowa Code chapter 725.

ITEM 5. Amend rule 481—104.5(99B) as follows:

481—104.5(99B) Registration. An amusement device must be registered if it meets the registration requirements set forth in Iowa Code section ~~99B.10(1)“f.”~~ 99B.53. The outcome of the game is not primarily determined by the skill or knowledge of the operator, and registration is required if chance plays a role equal to or greater than the players’ skill or knowledge in determining the outcome of the game. Additional licenses or registrations under Iowa Code chapter 99B are not required.

ITEM 6. Amend rule 481—104.6(99B) as follows:

481—104.6(99B) Violations. Failure to comply with the limitations imposed on the use and possession of amusement devices in Iowa Code ~~section 99B.10 as amended by 2007 Iowa Acts, Senate File 510, section 2,~~ chapter 99B constitutes unlawful gambling, which may result in the following consequences. Additional consequences apply for registered amusement devices pursuant to 481—Chapter 105 and Iowa Code ~~section 99B.10 as amended by 2007 Iowa Acts, Senate File 510, section 2~~ chapter 99B.

1. Conviction for illegal gambling under the provisions of Iowa Code chapter 725.
2. Forfeiture of property under the provisions of Iowa Code chapter 809.

ITEM 7. Adopt the following new rule 481—104.7(99B,17A):

481—104.7(99B,17A) Declaratory orders. In addition to the requirements for declaratory orders found in 481—Chapter 3, parties seeking a declaratory order shall file with their petition a written evaluation of the game by an independent gaming laboratory approved by the department.

104.7(1) *Approved by the department.* “Approved by the department,” for purposes of this rule, means that the gaming laboratory has submitted its qualifications in writing to the director for review and approval in writing by the director or the director’s designee.

104.7(2) *Written evaluation—requirements.* The independent gaming laboratory’s evaluation must analyze whether chance plays a role equal to or greater than the players’ skill or knowledge in determining the outcome of the game. “Outcome of the game” includes both whether the player correctly solves the puzzle and what prize is awarded.

ITEM 8. Amend **481—Chapter 104**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section 99B.10~~ sections 99B.1, 99B.2 and 99B.51 to 99B.60.

ITEM 9. Rescind the definitions of “Manufacturer’s representative” and “Organization” in rule **481—105.1(10A,99B)**.

ITEM 10. Amend rule **481—105.1(10A,99B)**, definitions of “Distributor,” “Manufacturer,” “Owner,” “Registered amusement device” and “Responsible party,” as follows:

“Distributor” ~~means, for the purposes of Iowa Code sections 99B.10, 99B.10A, and 99B.10B, any person who owns electrical or mechanical amusement devices that are registered as provided in Iowa Code section 99B.10(4) and that are offered for use at more than a single location or premises~~ is as defined in Iowa Code section 99B.51.

“Manufacturer” ~~means, for the purposes of Iowa Code sections 99B.10, 99B.10A, and 99B.10B, any person engaged in business in this state that originally produces an electrical or mechanical amusement device required to be registered under Iowa Code section 99B.10(4) or produces individual components for use in such a device~~ is as defined in Iowa Code section 99B.51.

“Owner” ~~means, for the purposes of Iowa Code sections 99B.10A and 99B.10B, any person that owns an operable registered electrical or mechanical amusement device. An owner that operates for profit is allowed up to two machines at a single location. An owner that meets the requirements of Iowa Code section 99B.7(1)“m” is allowed up to four machines at a single location~~ is as defined in Iowa Code section 99B.51.

“Registered amusement device” means an electrical or mechanical amusement device in operation subject to registration by the department pursuant to Iowa Code ~~section 99B.10(1)“f.”~~ 99B.53 and includes both the external and internal components. Any change in the registered amusement device,

including the external and internal components of the registered amusement device, constitutes a new registered amusement device for which registration by the owner is required. The word “change” as used herein does not include repairs or replacement of parts that do not change or alter the operation of the device as originally registered by the owner. If the repairs or replacement parts alter the operation of the device as originally registered, then the device must be reregistered before it is made available for operation.

“*Responsible party*,” as listed on the amusement device registration, means the owner of the amusement ~~device(s)~~ device.

ITEM 11. Amend subrule 105.2(6) as follows:

105.2(6) The registered amusement device shall be registered in accordance with these rules and shall comply with all of the requirements of Iowa Code section ~~99B.10~~ 99B.53, this chapter, 481—Chapter 104, and any other applicable laws or rules.

ITEM 12. Amend subrule 105.2(8) as follows:

105.2(8) If the department, or the department’s designee, determines that a registered amusement device is not in compliance with the requirements of this chapter or any other provision of Iowa law, the device may be subject to seizure, and any registration associated with the device, including the registration of the manufacturer, ~~manufacturer’s representative~~, distributor, or owner, may be revoked or suspended.

ITEM 13. Adopt the following new subrule 105.2(15):

105.2(15) Devices shall not allow for more than one player. Each playing position constitutes one amusement device.

ITEM 14. Amend rule 481—105.5(99B), introductory paragraph, as follows:

481—105.5(99B) Registration by a manufacturer, ~~manufacturer’s representative~~, distributor, or an owner that operates for profit. A person engaged in business in Iowa as a manufacturer, a ~~manufacturer’s representative~~, a distributor, or an owner that operates for profit shall be registered with the department prior to engaging in business in Iowa. A person shall register under each of the categories that apply to the business to be conducted in Iowa and shall pay the designated fee for each category of registration.

ITEM 15. Amend subrule 105.5(1) as follows:

105.5(1) Each person that registers with the department shall pay an annual registration fee as follows:

- a. For a manufacturer ~~or manufacturer’s representative~~, \$2,500.
- b. For a distributor, \$5,000.
- c. For an owner of no more than ~~two~~ four registered amusement devices at a single location or premises that is not ~~an organization that meets the requirements of Iowa Code section 99B.7(1) “m,” a~~ qualified organization, \$2,500.

ITEM 16. Amend rule 481—105.6(99B), introductory paragraph, as follows:

481—105.6(99B) Registration of registered amusement devices. Each owner of an amusement device subject to registration by the department pursuant to Iowa Code section ~~99B.10(4)~~ 99B.53 shall obtain a registration. A registration issued pursuant to Iowa Code chapter 99B is required to offer a registered amusement device for use.

ITEM 17. Amend subrule 105.6(3) as follows:

105.6(3) A new registered amusement device must be obtained from a manufacturer; ~~a manufacturer’s representative or a distributor~~ that is registered with the department pursuant to Iowa Code section 99B.56. A registered amusement device that has been placed on location and used may be obtained from a manufacturer, distributor or owner that is registered with the department pursuant to Iowa Code section 99B.10A 99B.56. A distributor or owner that ceases, for any reason, to be registered pursuant to Iowa Code section 99B.56 may sell any registered amusement devices in the distributor’s

or owner's possession within 12 months from the date registration ceases. For ~~new machines~~ all amusement devices new to the purchaser, proof of purchase, which includes the seller's name, company name, and address, must accompany the application for registration of the machine.

~~The owner of the registered amusement device shall exercise due diligence in ensuring that the amusement device is in compliance with these rules and all laws governing such devices. Upon request by the department or the department's designee, any manufacturer, manufacturer's representative or distributor registered with the department, or any owner of a registered device, shall permit the inspection of any amusement device and shall make available for inspection all records, documents, and agreements pertaining to the amusement device.~~

ITEM 18. Amend subrule 105.6(4) as follows:

~~**105.6(4)** An organization that meets the requirements of Iowa Code section 99B.7(1)“m” shall not permit or offer for use more than four registered amusement devices at any single premises. Organizations that meet the Iowa Code section 99B.7(1)“m” requirements under Section 501(c) of the Internal Revenue Code shall provide a copy of the exemption approval letter from the Internal Revenue Service. All other persons shall not permit or offer for use more than two registered amusement devices at any single premises. The single premises where the registered amusement device(s) is located shall have a Class “A,” Class “B,” Class “C,” special Class “C,” or Class “D” liquor control license or a Class “B” or a Class “C” beer permit issued pursuant to Iowa Code chapter 123. New registrations shall not be issued to devices to be located at premises with Class “B” or Class “C” beer permits. No more than four registered amusement devices shall be permitted or offered for use at any single premises.~~

a. A registered amusement device may be located on premises for which a class “A,” class “B,” class “C,” special class “C,” or class “D” liquor control license has been issued pursuant to Iowa Code chapter 123.

b. A registered amusement device may be located on the premises for which a class “B” or class “C” beer permit has been issued pursuant to Iowa Code chapter 123, but new registrations shall not be issued to devices to be located at premises with class “B” or class “C” beer permits.

(1) A registered amusement device at a location for which only a class “B” or class “C” beer permit has been issued pursuant to Iowa Code chapter 123 may only be relocated to a location for which a class “A,” class “B,” class “C,” special class “C,” or class “D” liquor license has been issued and shall not be transferred, assigned, sold or leased to another person for which only a class “B” or class “C” beer permit has been issued pursuant to Iowa Code chapter 123.

(2) If ownership of the location changes, the class “B” or class “C” beer permit does not lapse, and the registered amusement device is not removed from the location, the device may remain at the location.

ITEM 19. Amend subrule 105.6(5), introductory paragraph, as follows:

~~**105.6(5)** Each electrical or mechanical amusement device required to be registered pursuant to Iowa Code section 99B.10~~ 99B.53 shall include on the amusement device a counting mechanism.

ITEM 20. Rescind subrule 105.6(6) and adopt the following **new** subrule in lieu thereof:

105.6(6) The owner of the registered amusement device shall exercise due diligence in ensuring that the amusement device is in compliance with these rules and all laws governing such devices. Upon request by the department or the department's designee, any manufacturer or distributor registered with the department, or any owner of a registered device, shall permit the inspection of any amusement device and shall make available for inspection all records, documents, and agreements pertaining to the amusement device.

ITEM 21. Amend rule 481—105.7(99B) as follows:

481—105.7(99B) Violations. Failure to comply with the limitations imposed on the use and possession of registered amusement devices in Iowa Code chapter 99B may result in the following:

1. Conviction for illegal gambling may result under the provisions of Iowa Code chapter 725.
2. Suspension or revocation of a wine or beer permit or of a liquor license may result under the provisions of Iowa Code chapter 123.
3. Property may be forfeited under the provisions of Iowa Code chapter 809.

4. Violation of any laws pertaining to gambling may result in suspension or revocation of a registration as prescribed in Iowa Code section ~~99B.10B or 99B.10C~~ 99B.55.

5. Unless otherwise prescribed in Iowa Code section ~~99B.10B or 99B.10C~~ 99B.55, a registration may be revoked upon the violation of any gambling law, rule or regulation, including Iowa Code chapter 99B, 481—Chapter 104, or this chapter.

6. A registration may be revoked if the registrant or an agent of the registrant engages in any act or omission that would have permitted the department to refuse to issue a registration under Iowa Code chapter 99B.

7. A person under the age of 21 shall not participate in the operation of an electrical or mechanical amusement device that is required to be registered. A person who violates the provisions of Iowa Code section ~~99B.10C(1)~~ 99B.57 commits a scheduled violation under Iowa Code section 805.8C(4).

ITEM 22. Amend rule **481—105.9(10A,99B,82GA,SF510)**, parenthetical implementation statute, as follows:

481—105.9(10A,99B,82GA,SF510) Procedure for denial, revocation, or suspension of a registration.

ITEM 23. Amend subrule 105.11(1), introductory paragraph, as follows:

105.11(1) The department shall consider the following factors in determining whether to approve or deny an application for registration of an amusement device, a manufacturer, a distributor, or an owner, ~~or a manufacturer's representative~~:

ITEM 24. Amend paragraph **105.11(1)“a”** as follows:

a. The applicant and responsible person's history of compliance with Iowa Code sections ~~99B.10, 99B.10A and 99B.10B~~ 99B.51 to 99B.60 and with other gambling laws and rules.

ITEM 25. Amend **481—Chapter 105**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~99B.10, 99B.10A, 99B.10B, and 99B.10C~~ 99B.1, 99B.2 and 99B.51 to 99B.60.